

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

LAWRENCE MOSLEY §
v. § CIVIL ACTION NO. 6:07cv528
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Lawrence Mosley, proceeding *pro se*, filed this application for the writ of habeas corpus complaining of the legality of his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Mosley complained of a 1995 conviction for aggravated robbery from Anderson County, Texas, receiving a sentence of 99 years in prison. He has filed one previous federal habeas corpus petition challenging this sentence, which was dismissed with prejudice as time-barred. *See Mosley v. Director, TDCJ-CID*, civil action no. 6:07cv363 (E.D.Tex., dismissed August 22, 2007, no appeal taken).

After review of the petition, the Magistrate Judge issued a Report recommending that the petition be dismissed as successive. The Magistrate Judge recommended that the dismissal be without prejudice but subject to the securing of permission from the Fifth Circuit Court of Appeals to file a successive petition. The Magistrate Judge also recommended that Mosley be denied a certificate of appealability *sua sponte*.

Mosley received a copy of this Report on December 3, 2007, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings.

conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*). Mosley did file a request for leave to file a successive petition, but such motion is properly addressed to the Fifth Circuit Court of Appeals and was forwarded to that Court.

The Court has reviewed the pleadings in this case and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED without prejudice. Mosley may refile his petition at such time as he obtains permission from the Fifth Circuit Court of Appeals to file a second or successive petition. He may not refile his petition without obtaining such leave, and this dismissal of the present petition shall have no effect upon Mosley's right to seek permission from the Fifth Circuit to file a successive petition. It is further

ORDERED that the Petitioner Lawrence Mosley be and hereby is DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So ORDERED and SIGNED this 22nd day of February, 2008.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**